IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9993 of 2007

Date of decision: 18.10.2007

M/s Ben Auto Transmission Pvt. Ltd.

..... Petitioner

Versus

Union of India and others

..... Respondents

Coram: Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Ajay Kumar Mittal

Present: Mr. I.P.Singh, Advocate,
for the petitioner.

Mr. P.K.Dutt, Advocate,
for respondents No. 1 to 3.

Mr. Harminderjit Singh, Advocate,
for respondent No. 4.

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M.M.Kumar, J.

A copy of the written statement has been handed over to the learned counsel for the petitioner in the Court today. As an exceptional case, we have also taken on record the written statement, as the matter can be disposed of with the consent of the parties.

The instant petition filed under Article 226 of the Constitution prays for declaring the Rules 60 and 61 of the 2nd Schedule of the Income Tax Act, 1961 to be ultra-vires of Constitution with a further prayer for direction to the respondents not to apply the aforementioned Rules to proceedings under Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. A further prayer has been made for setting aside order dated 02.03.2007 (P-2) and order dated 25.05.2007 (P-11) passed by the Debts Recovery Tribunal, Chandigarh. Still further another

prayer has been made for quashing order dated 04.06.2007 (P-12) passed by the Debts Recovery Tribunal, Chandigarh in another appeal bearing No. 5 of 2007.

At the outset, learned counsel for the respondents has drawn our attention to para-A of the preliminary submissions made in the reply filed by Small Industries Development Bank of India (in short 'S.I.D.B.I.')-respondent No. 2. It has been pointed out that S.I.D.B.I.-respondent No. 2 is prepared to accept a sum of Rs. 56.50 lacs with interest from 05.03.2007 at Primary Lending Rate (10.5%), which may satisfy its claim in respect of the factory, land and building situated at E-124, Phase VII, Industrial Focal Point, SAS Nagar, Mohali. It has further been averred that the amount of Rs. 42.95 lacs realised from the sale of the other mortgaged property i.e. HIG Flat No. 136, Ground Floor, Secor-71, SAS Nagar, Mohali shall also be released along with interest in favour of S.I.D.B.I.-respondent No. 2 by the Recovery Officer, Debts Recovery Tribunal, Chandigarh.

Learned counsel for the petitioner readily accepts the averment made in para-A of the written statement and prays that the petitioner be given three months time to make the whole payment.

In view of the above, auction in respect of the factory, land and building situated at E-124, Phase-VII, Industrial Focal Point, SAS Nagar, Mohali is hereby set aside. The Recovery Officer, Debts Recovery Tribunal, Chandigarh is directed to release a sum of Rs. 42.95 lacs realised from the sale of second mortgaged property i.e. HIG Flat No. 136, Ground Floor, Sector-71, SAS Nagar, Mohali along with interest in favour of S.I.D.B.I.-respondent No. 2. The petitioner is granted three months time to make the payment of Rs. 56.50 lacs with interest with effect from 05.03.2007 at the P.L.R. (which is 10.5%) in satisfaction of the claim of S.I.D.B.I.-respondent No. 2 in respect of the factory, land and building as

aforementioned. As a consequence, the Recovery Officer shall release the amount of Rs. 56.50 lacs to the auction purchaser. He shall be at liberty to charge any additional amount from the petitioner as per rules in view of the cancellation of the auction. It is made clear that if the petitioner fails to abide by the condition of making payment within a period of three months, then the S.I.D.B.I.-respondent No. 2 shall be free to effect recovery by sale of the properties or by adopting any other method in accordance with law.

The writ petition stands disposed of in the abovesaid terms.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 18, 2007
pj